

Appl. No. 10/757,813
Docket No. 7294C
Amdt. dated December 4, 2008
Reply to Office Action mailed on September 4, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1-3, 5-7, 10-11 and 15-19 are pending in the present application. No additional claims fee is believed to be due.

Claims 4, 8-9 and 12-14 were previously canceled without prejudice.

Claims 1 and 10 are herein amended to recite a fecal storage element comprising a macroporous material. Support for this amendment is found, for example, at page 27, lines 4-20 of the specification as originally filed.

New Claims 18 and 19 are added herein. Support for claim 18 is found, for example, at page 27, lines 4-20 of the specification as originally filed. Support for Claim 19 is found, for example, at page 27, lines 22-34 of the specification as originally filed.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejections Under 35 U.S.C. §103(a) Over Thompson

Claims 1-3, 5-7, 10-11 and 15-17 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Thompson, U.S. Patent No. 5,281,208. This rejection is traversed for at least two reasons.

First, Thompson does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of amended, independent Claims 1 and 10 (see MPEP § 2143.03). Specifically, as discussed above, Claims 1 and 10 are herein amended to recite a fecal storage element comprising a macroporous material. Thompson does not teach or suggest a fecal storage element comprising a macroporous material.

Second, Thompson teaches away from the use of a macroporous storage element, and, therefore, does not support a *prima facie* case of obviousness (see MPEP § 2145(X)(D)). See, for example, Thompson at Col. 8, lines 53-63:

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The objective is to provide a gradient of capillary suction between the topsheet and underlying layer or layers of the articles herein, such that fluid is drawn into the "z" direction and away from the surface of the article into its ultimate storage layer. Empirically, capillary suction is related to adhesion tension and inversely related to the size of the openings—i.e., in the typical case, the openings in the topsheet will be larger than the intra-fiber capillary channels, which, in turn, will be larger than the inter-fiber capillary channels in a fibrous storage core.

In contrast to Thompson's emphasis on the importance of a gradient of capillary suction, the present specification explicitly defines "macroporous" as referring "to materials having pores too large to effect capillary transport of fluid." See page 27, lines 10-11 (emphasis added). Thus, Thompson teaches away from the presently claimed macroporous material.

For at least these reasons, amended Claims 1 and 10 are believed to be patentable over Thompson. All other claims depend from Claim 1 or Claim 10, and therefore include all the limitations of Claim 1 or Claim 10. Thus, Claims 2-3, 5-7, 11, and 15-17 are believed to be patentable over Thompson for at least the same reasons as Claims 1 and 10.

New Claim 18 is directed to non-particulate macroporous materials. Claim 18 depends from Claim 1 and includes all the elements of Claim 1. As discussed above with regard to Claim 1, Thompson teaches away from the use of a macroporous material. Therefore, Claim 18 is believed to be patentable over Thompson for at least the same reasons as Claim 1.

New Claim 19 is directed to a macro-particulate structure comprising particles having a nominal size between about 2 mm and about 16 mm. Claim 19 depends from Claim 1 and, therefore, includes all the elements of Claim 1. Thus, Claim 19 is believed to be patentable over Thompson for at least the same reasons as Claim 1. Further, Claim 19 is believed to be patentable over Thompson, and, by incorporation, Lash, U.S. Patent No. 4,935,022, because Lash teaches away from using particles having a nominal size between about 2 mm and about 16 mm (see MPEP § 2145(X)(D)).

In particular, Lash teaches that particle size should be limited. See Lash at Col. 15, lines 4-6. Lash not only teaches that the mass median particle size should, ideally,

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range from 420 to 700 microns (see Lash at Col. 14, lines 55-63), but that outliers from the median particle size up to 1410 microns should be limited to no more than about 16% by weight of all of the particles. See Lash at Col. 15, lines 4-20. In contrast, Claim 19 recites particles having a nominal size between about 2 mm and about 16 mm (emphasis added).

Thus, Lash teaches away from the use of macroparticles, and, as discussed above, Thompson teaches away from the use of a macroporous material. For at least these reasons, new Claim 19 is believed to be patentable over Lash and Thompson.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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